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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:



Office: PHOENIX, AZ

Date:

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and
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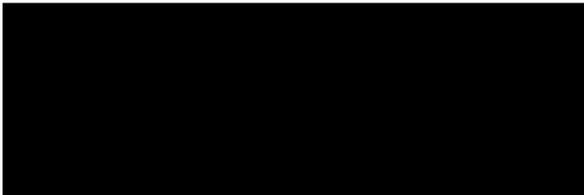
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter the United States by fraud or willful misrepresentation. The record indicates that the applicant is married to a lawful permanent resident of the United States, and the father and stepfather of United States citizens. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife and son.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 20, 2007.

On appeal, the applicant, through counsel, asserts that the applicant's wife and child will suffer extreme hardship. *Form I-290B*, filed September 19, 2007.

The record includes, but is not limited to, counsel's appeal brief; affidavits from the applicant and his wife; letters of support for the applicant and his wife; tax documents, bank statements, utility bills, auto and health insurance statements, a W-2 form for the applicant's wife, and mortgage documents; a letter from [REDACTED] regarding the applicant's wife's medical conditions; medical records for the applicant's wife; a note from [REDACTED]'s office regarding the rescheduling of a medical appointment for the applicant; and preoperative and postoperative notices for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully

admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present case, the record indicates that on November 20, 1995, the applicant entered the United States without inspection. On June 28, 1997, the applicant married his wife, a lawful permanent resident of the United States, in Arizona. On December 21, 1998, the applicant's wife filed a Form I-130 on behalf of the applicant. On an unknown date, the applicant voluntarily departed the United States. On August 10, 1999, the applicant attempted to enter the United States by using a laser B1/B2 Visa/BCC issued to his brother. On the same day, the applicant was expeditiously removed from the United States. On an unknown date in August 1999, the applicant entered the United States without inspection. On October 30, 2001, the applicant's Form I-130 was approved. On March 23, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On June 22, 2007, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and a Form I-601. On August 17, 2007, the applicant's Form I-212 was approved. On August 20, 2007, the Field Office Director denied the applicant's Form I-601, finding the applicant had willfully misrepresented his identity in an attempt to enter the United States and had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant's attempt to enter the United States using a laser B1/B2 Visa/BCC issued to another person, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act.¹ The AAO notes that counsel does not dispute this finding.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship for the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences as a result of his or her inadmissibility is not directly relevant to a determination of extreme hardship in a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Under section 212(i) of the Act, a waiver is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's son will not be considered in this proceeding, except to the extent that it creates hardship for the qualifying relative. Once extreme hardship is established, it is but one favorable

¹ The AAO notes that the applicant is also inadmissible to the United States under section 212(a)(9)(B) of the Act for having accrued unlawful presence in excess of one year, i.e., from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States sometime after the December 21, 1998 filing of the Form I-130. However, the AAO will not address the applicant's inadmissibility under section 212(a)(9)(B) of the Act as a waiver of inadmissibility under section 212(i) of the Act will also satisfy the requirements for a 212(a)(9)(B)(v) waiver of unlawful presence.

factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not...fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has also held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); see also *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

On appeal, counsel asserts that the applicant's wife and son will suffer extreme hardship if they relocate to Mexico. Counsel states the applicant's wife has a serious illness and the applicant cares for her. In a letter dated September 4, 2007, [REDACTED] diagnoses the applicant's wife with H. Pylori and arthritis, which at times causes her extreme joint pain. [REDACTED] also indicates that the applicant's wife has been given Ibuprofen for pain, but that he may have to treat her pain with narcotics. The applicant's wife states that if she joined the applicant in Mexico, it would be difficult to receive medical treatment for her conditions. The AAO notes that there is no documentation in the record establishing that the applicant's wife cannot receive medical treatment in Mexico. Additionally, [REDACTED] does not indicate that the applicant's wife's condition has to be treated in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel claims that the applicant's son is an excellent student, who does not "know [another] way of life than the American way." Counsel also states that the applicant's son "will be emotionally and physically affected" if he had to relocate to Mexico. In his statement, the applicant asserts that his son does not know how to read or write in Spanish and that his academic performance would be disrupted if he relocated to Mexico. The AAO finds the record to contain no documentary evidence, e.g., evaluations from licensed mental health practitioners or other medical reports, that demonstrates the applicant's son would suffer emotional or physical harm if he relocated to Mexico. Additionally, the AAO notes that, as previously discussed, the applicant's son is not a qualifying relative for the purposes of this proceeding and the record does not demonstrate how any hardship he might suffer upon relocation would affect his mother, the only qualifying relative.

Counsel asserts that the applicant has resided in the United States since 1995. Counsel also states that the applicant is under medical treatment following a neurosurgical procedure he had done and that he will be in great danger if he is returned to Mexico. The AAO notes that the record contains documentation that indicates the applicant had some type of neurosurgery on January 10, 2007 but that it does not indicate the specific surgery or the applicant's status following surgery. It also finds the record to contain a September 14, 2007 note from [REDACTED]'s office that reports the applicant as stable and recovering. No evidence in the record establishes that the applicant must remain in the United States for treatment. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as previously noted, hardship the applicant experiences as a result of his inadmissibility is not directly relevant to a section 212(i) waiver proceeding and the record does not demonstrate how the applicant's medical condition would affect his wife, the only qualifying relative.

The AAO also notes that the record does not establish that the applicant's wife has no transferable skills that would aid her in obtaining a job in Mexico or that she would be unable to obtain employment in Mexico. The applicant's wife is a native of Mexico and the record does not indicate that she does not speak Spanish or that she has no family ties to Mexico. Based on the record before it, the AAO does not find the applicant to have established that his wife would suffer extreme hardship if she returned to Mexico with him.

The record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. As previously discussed, the record indicates that the applicant's wife is under treatment for H. Pylori, an infection of the stomach, and arthritis, which at times causes her extreme joint pain. The applicant asserts that his wife is taking medication and that she has been prescribed new medication to treat her pain and is unable to operate a motor vehicle while under medication. He further asserts that his wife needs him to take care of her while she is under treatment, which will last for the rest of her life. The applicant states that he is his wife's only caregiver and that she will suffer tremendous hardship without his care and support. The applicant's wife states that she needs the applicant to take care of her for the rest of her life, and she "would suffer tremendous hardship without his care and support." She also states that she cannot raise her son by herself. The AAO acknowledges that the applicant's wife has H. Pylori and arthritis. It further notes that the statement from [REDACTED] indicates that he is considering prescribing narcotics for the applicant's wife's pain and that "[i]t would be valuable to have [the applicant] with [his wife] to aid as needed." However, [REDACTED], although he indicates that he would advise the applicant's wife against operating a motor vehicle while taking a narcotic medication, does not indicate that the applicant's wife would be unable to function on her own or that the applicant would play an essential role in her care. Moreover, the AAO does not find the record to document how the applicant's wife would be affected if she were unable to drive. There is also no evidence in the record that establishes that the applicant's wife would be unable to care for her son without the applicant's help. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.*

Counsel states that since the applicant basically runs and operates the family business, his wife will be unable to afford all of the household expenses without the applicant's help. The AAO notes that while the record includes documentation of some of the applicant's and his wife's expenses, they are insufficient proof that the applicant's wife would be unable to support herself and her son in the applicant's absence. Further, the applicant has submitted no evidence to establish that he would be unable to obtain employment in Mexico and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO does not find the applicant to have established that his wife would experience extreme hardship if his waiver application were to be denied and she remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.